

**Practitioner's Docket No.: 889\_001**

**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re the application of: Jiro KANIE

Ser. No.: 10/826,165

Group Art Unit: 1618

Filed: April 16, 2004

Examiner: Young, Micah Paul

Conf. No.: 8549

For: ENTERAL NUTRITION PRODUCT AND METHOD FOR PREPARING  
THE SAME

Mail Stop Appeal Brief-Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**RESPONSE TO NOTIFICATION OF NON-COMPLIANT APPEAL BRIEF**

Sir:

In the Notification of Non-Compliant Appeal Brief mailed on October 23, 2009, box 4(a) was checked, alleging that the Appeal Brief was deficient because the brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal that refers to the specification by page and line number. The Notification of Non-Compliant Appeal Brief does not indicate which independent claims allegedly fail to meet the specification mapping requirement. Applicant respectfully submits, however, that the only independent claim is claim 8, and that claim 8 is correctly mapped to the specification in compliance with 37 CFR §41.37(c)(1)(v).

The Order Returning Undocketed Appeal to Examiner, issued on October 7, 2009 by Review Team Paralegal Specialist Pamela Bennett, alleged that the Appeal Brief was deficient because independent claim 11 was not mapped to the specification, as required by the rules. Applicant respectfully submits, however, that claim 11 depends from independent claim 8, and is not an independent claim that otherwise requires mapping under the rules.

During a telephonic interview on October 27, 2009, Paralegal Specialist Bennett agreed that dependent claim 11 did not require mapping and indicated that the Appeal Brief is not deficient. In view of the fact that the case had already been remanded to the Examiner and the Notification of Non-Compliant Appeal Brief had already been issued by the

Examiner, however, Paralegal Specialist Bennett recommended that Applicant file a response stating that the Order and the Notification of Non-Compliant Appeal Brief were made in error and claim 11 is not an independent claim.

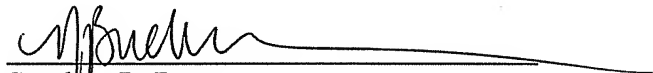
In view of the above, Applicant respectfully submits that the Appeal Brief filed March 16, 2009 is not deficient, and respectfully requests that the Notification of Non-Compliant Appeal Brief be reconsidered and withdrawn so that this application may proceed to the Board of Patent Appeals for docketing in a timely manner.

Should the Examiner have any questions regarding this paper, he is requested to telephone Applicant's undersigned representative.

Respectfully submitted,

October 28, 2009

Date



Stephen P. Burr  
Reg. No. 32,970

Nicole J. Buckner  
Reg. No. 51,508

SPB/NB/tlp

BURR & BROWN  
P.O. Box 7068  
Syracuse, NY 13261-7068

Customer No.: 25191  
Telephone: (315) 233-8300  
Facsimile: (315) 233-8320